IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Crl.MC.No. 2124 of 2007()

ST.2136/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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PETITIONER: ACCUSED

V.D.JOSEPH, S/O.DEVASYA, VALLANATTU,
THOTTAPADY, KALKANDI P.O. MANNARKKAD TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BABURAJ, KAIPPAM HOUSE, OTTAPALAM,
PALAKKAD.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2124 of 2007

Dated this the 3rd day of July 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The case was registered as early as in 2003. The petitioner has not appeared before the learned Magistrate. Reckoning him as an absconding accused, the learned Magistrate has issued coercive processes against the petitioner.

2. According to the petitioner, he is absolutely innocent. He has not received notice of demand under Section 138 of the Negotiable Instruments Act or any process issued by the learned Magistrate. His absence is not wilful. He is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

3. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007